IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1016 OF 2005

Smt.Prabhawati Kantilal Nale ..Petitioner

Vs.

Smt.Shalan Mahadeo Kalkute
and Anr. ..Respondents

....

Mr.P.B.Shah for Petitioner
Mr.Rahul S.Kate for Respondent No.1

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 19,2005

P.C.:

1. Heard Mr.P.Shah, the learned counsel for the Petitioner and Mr.Kate, the learned counsel for the Respondent.

2. The Petitioner was the returned candidate in the election held for constituting Dorlewadi Village Panchayat on 17.12.2002. There were in all 328 voters but the actual voting was 277 only. From Ward No.5, two members were to be elected and one of them was to be a female candidate. However, there were four candidates in the fray, two women and two men. The Petitioner was declared elected, whereas the Respondent No.1 lost the said election. The

Respondent therefore, filed Election Petition No.1 of 2002 and the same was allowed by the learned Jt. Civil Judge J.D. at Baramati vide the impugned judgment and order dated 17.2.2005. The election of the Petitioner has been held to be illegal and further the Respondent No.1 has been held to be elected from Ward No.5.

3. Pursuant to the order passed by this Court on 1.3.2005, the controversial ballot paper being No.151 and counted at sequence no.275 (Bunch No.12) has been forwarded by the Court below through a special messenger in a sealed cover. The same has been opened in the Court and shown to the respective counsel.

4. During the counting that had taken place on 17.12.2002 at about 6 p.m. it was noted that the Respondent no.1 had got 141 votes whereas the Petitioner polled 140 votes and two ballot papers were held to be invalid. It was alleged that when the agent of the Respondent had gone out the present Petitioner in collusion with the Returning Officer, held one invalid ballot paper as valid in her favour and thus, the total number of votes secured by the present Petitioner came to 141 i.e. the same votes as polled by the present Respondent no.1. The Returning Officer, on the basis that the two women

candidates had secured equal votes (141), conducted a draw. Two chits were written and one of them was picked up and that happened to be of the Petitioner and thus, she was declared elected in the draw. The Respondent No.1 challenged the election and the validity of the ballot paper that was declared to be invalid. The Election Petition Court on perusal of the ballot paper bearing No.151 and counted at sequence no.276 from Bunch no.12, noted that the voter had voted clearly for Ghode Bharat Shrawan and Nale Prabhawati Kantilal the present petitioner. However, in front of the name of 4th candidate in the fray i.e. Salode Pandurang Narayan, there was thick ink spot and it was not possible, on the face of it to determine whether the voter had exercised the the franchise in favour of Salode Pandurang Narayan as well. To determine this issue, the Election Petition Court rightly considered the reverse side of the ballot paper and noted that the voter had exercised franchise in favour of three candidates instead of permitted two candidates. On the ballot paper, there are in all four instructions and the 4th instruction prohibits voting in favour of more than two candidates. The conclusions drawn by the Election Petition Court on perusal of the subject ballot paper, cannot be held to be erroneous. In fact, the findings arrived at by the Court below, are supported and it is clear that the concerned voter voted for

candidates at Serial Nos. 2 to 4.

5. Mr.Shah, the learned counsel for the Petitioner submitted that even if the findings arrived at by the Court below are accepted as it is, as far as the Petitioner is concerned, the voter had exercised franchise in her favour and not in favour of the respondent no.1. By relying upon the decision in the case of **Kum. Shradha Devi Vs.Krishna Chandra Pant and others [AIR 1982 SC 159]**, Mr.Shah submitted that the decision taken by the Returning Officer to count ballot paper at Sr.No. 151 in favour of the Petitioner cannot be held to be illegal. The decision relied upon by Mr.Shah, cannot be made applicable to the facts at hand. The voters were clearly required to exercise franchise in favour of two candidates and the subject ballot paper shows that franchise has been exercised in favour of three candidates. Hence, the ballot paper bearing Sr.No.151 could not have been held to be valid and if that is excluded from the votes secured by the Petitioner, the figure will come to 140 only as against 141 votes polled by the respondent no.1. Consequently, there was no occasion for the Returning Officer to hold that both of them secured equal votes and to resort to a lucky draw. The decision of the trial Court therefore, is required to be upheld and the same cannot be termed as perverse or patently

erroneous. On perusal of the subject ballot paper, it is certainly a possible decision calling for no interference in a petition under Article 227 of the Constitution of India.

6. The petition is therefore, rejected summarily.

7. Registry to return the ballot paper to the Court below.

[B.H.MARLAPALLE,J.]